

**General Docket  
United States Court of Appeals for the Ninth Circuit**

**Court of Appeals Docket #:** 18-16788

**Docketed:** 09/20/2018  
**Termed:** 03/07/2019

**Nature of Suit:** 2895 Freedom of Information Act of 1974

Darryl Carter v. USDOJ

**Appeal From:** U.S. District Court for Northern California, Oakland

**Fee Status:** Due

**Case Type Information:**

- 1) civil
- 2) united states
- 3) null

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**Originating Court Information:**

**District:** 0971-4 : [4:18-cv-02455-SBA](#)

**Trial Judge:** Sandra B. Armstrong, District Judge

**Date Filed:** 04/25/2018

<b>Date Order/Judgment:</b>	<b>Date Order/Judgment EOD:</b>	<b>Date NOA Filed:</b>	<b>Date Rec'd COA:</b>
08/31/2018	08/31/2018	09/20/2018	09/20/2018

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**Prior Cases:**

<a href="#">16-60034</a>	<b>Date Filed:</b> 05/11/2016	<b>Date Disposed:</b> 08/15/2017	<b>Disposition:</b> Affirmed - Memorandum
<a href="#">17-17278</a>	<b>Date Filed:</b> 11/08/2017	<b>Date Disposed:</b> 05/24/2018	<b>Disposition:</b> Affirmed
<a href="#">18-16314</a>	<b>Date Filed:</b> 07/16/2018	<b>Date Disposed:</b> 08/23/2018	<b>Disposition:</b> Jurisdictional Defects - Judge Order
<a href="#">18-16521</a>	<b>Date Filed:</b> 08/13/2018	<b>Date Disposed:</b> 09/18/2018	<b>Disposition:</b> Dismissed - Judge Order

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**Current Cases:**

None

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DARRYL CARTER  
Plaintiff - Appellant,

Darryl Carter  
Direct: 650-250-9404  
[NTC Pro Se]  
P.O. Box 1148  
Palo Alto, CA 94302

v.

UNITED STATES DEPARTMENT OF JUSTICE  
Defendant - Appellee,

James A. Scharf, Assistant U.S. Attorney  
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San Francisco, CA 94102

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DARRYL CARTER,

Plaintiff - Appellant,

v.

UNITED STATES DEPARTMENT OF JUSTICE,

Defendant - Appellee.

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09/20/2018	<a href="#">1</a> 19 pg, 442.78 KB	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL AND PRO SE APPELLANT. SEND MQ: No. The schedule is set as follows: Appellant Darryl Carter opening brief due 11/19/2018. Appellee United States Department of Justice answering brief due 12/19/2018. Appellant's optional reply brief is due 21 days after service of the answering brief. [11018639] (JBS) [Entered: 09/20/2018 09:32 AM]
09/20/2018	<a href="#">2</a> 16 pg, 320.27 KB	Filed (ECF) Appellant Darryl Carter Correspondence: RE: Cases:18-16314; Case:18-16521; and final order appeal per Case: 18-16788. Date of service: 09/20/2018 [11020135] [18-16788] (Carter, Darryl) [Entered: 09/20/2018 07:25 PM]
09/24/2018	<a href="#">3</a> 7 pg, 208.59 KB	Filed (ECF) Appellant Darryl Carter Correspondence: Designation of the record on appeal F.R.A.P 10 (b); circuit rule 10-3.1. Date of service: 09/24/2018 [11021900] [18-16788] (Carter, Darryl) [Entered: 09/24/2018 04:24 AM]
09/25/2018	<a href="#">4</a> 2 pg, 275.98 KB	Filed clerk order (Deputy Clerk: CO): The court's records reflect that the notice of appeal was filed during the pendency of a timely-filed motion listed in Federal Rule of Appellate Procedure 4(a)(4), and that motion is still pending in the district court. The September 20, 2018 notice of appeal is therefore ineffective until entry of the order disposing of the last such motion outstanding. See Fed. R. App. P. 4(a)(4). Accordingly, proceedings in this court are held in abeyance pending the district court's resolution of the pending September 10, 2018 motion. See <i>Leader Nat'l Ins. Co. v. Indus. Indem. Ins. Co.</i> , 19 F.3d 444, 445 (9th Cir. 1994). Within 14 days after the district court's ruling on the pending motion, appellant shall file a written notice in this court: (1) informing this court of the district court's ruling; and (2) stating whether appellant intends to prosecute this appeal. To appeal the district court's ruling on the post-judgment motion, appellant must file an amended notice of appeal within the time prescribed by Federal Rule of Appellate Procedure 4. The Clerk shall serve this order on the district court. [11024516] (CKP) [Entered: 09/25/2018 12:21 PM]
10/02/2018	<a href="#">5</a> 13 pg, 1.47 MB	Filed (ECF) Appellant Darryl Carter Motion to proceed In Forma Pauperis. Date of service: 10/02/2018. [11031466] [18-16788] (Carter, Darryl) [Entered: 10/02/2018 07:27 AM]
10/02/2018	<a href="#">6</a> 107 pg, 2.12 MB	Filed (ECF) Appellant Darryl Carter EMERGENCY Motion for injunction pending appeal. Date of service: 10/02/2018. [11031472] [18-16788] (Carter, Darryl) [Entered: 10/02/2018 07:35 AM]
10/02/2018	<a href="#">7</a> 2 pg, 56.58 KB	Filed (ECF) Appellant Darryl Carter Correspondence: Correspondence to the court regarding emergency motion filed on October 2, 2018. Also, the clerk's order entered on September 25, 2018 clearly oversteps the clerk's bounds with respect to interfering with appellant's substantive rights.. Date of service: 10/02/2018 [11031495] [18-16788] (Carter, Darryl) [Entered: 10/02/2018 07:44 AM]
10/02/2018	8	Fee status changed ( [Case Number 18-16788: IFP Pending In COA] ). [11031656] (QDL) [Entered: 10/02/2018 09:34 AM]
10/04/2018	<a href="#">9</a> 2 pg, 267.09 KB	Filed order (DIARMUID F. O'SCANLAIN and SANDRA S. IKUTA) To the extent that appellant's emergency motion at Docket Entry No. <a href="#">6</a> seeks reconsideration of the court's September 25, 2018 order holding appellate proceedings in abeyance pending the district court's resolution of the pending September 10, 2018 motion to set aside judgment, the motion is denied. To the extent that appellant's emergency motion at Docket Entry No. <a href="#">6</a> seeks injunctive relief pending appeal, the motion is denied without prejudice to renewal, if necessary, following the court's disposition of appellant's September 10, 2018 motion, and presentation of the request for injunctive relief to the district court. See Fed. R. App. P. 8(a). Proceedings in this court remain held in abeyance pending the district court's resolution of the pending motion to set aside judgment. See <i>Leader Nat'l Ins. Co. v. Indus. Indem. Ins. Co.</i> , 19 F.3d 444, 445 (9th Cir. 1994). Appellant is reminded that within 14 days after the district court's ruling on the pending motion to set aside judgment, appellant shall file a written notice in this court: (1) informing

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		<p>this court of the district court's ruling; and (2) stating whether appellant intends to prosecute this appeal. To appeal the district court's ruling on the post-judgment motion, appellant must file an amended notice of appeal within the time prescribed by Federal Rule of Appellate Procedure 4. The pending motion to proceed in forma pauperis will be addressed by separate order. [11036217] (ME) [Entered: 10/04/2018 05:28 PM]</p>
10/08/2018	<a href="#"><u>10</u></a> 4 pg, 480.94 KB	<p>Filed (ECF) Appellant Darryl Carter Correspondence: discrimination establishes irreparable harm.. Date of service: 10/08/2018 [11038220] [18-16788] (Carter, Darryl) [Entered: 10/08/2018 07:10 PM]</p>
10/18/2018	<a href="#"><u>11</u></a> 3 pg, 69.23 KB	<p>Filed (ECF) Appellant Darryl Carter response to Court order dated 10/04/2018. Date of service: 10/18/2018 [11051497] [18-16788]--[COURT UPDATE: Edited docket text to reflect correct filing type. 10/18/2018 by RY] (Carter, Darryl) [Entered: 10/18/2018 10:41 AM]</p>
10/18/2018	<a href="#"><u>12</u></a> 115 pg, 2.65 MB	<p>Filed (ECF) Appellant Darryl Carter EMERGENCY Motion for injunction pending appeal. Date of service: 10/18/2018. [11051558] [18-16788] (Carter, Darryl) [Entered: 10/18/2018 11:01 AM]</p>
10/18/2018	<a href="#"><u>13</u></a> 2 pg, 67.24 KB	<p>Filed (ECF) Appellant Darryl Carter Correspondence: Notice of Emergency Motion Pending Appeal filed October 18, 2018 at approximately 11:00 a.m. PT. Date of service: 10/18/2018 [11052764] [18-16788] (Carter, Darryl) [Entered: 10/18/2018 07:17 PM]</p>
10/24/2018	<a href="#"><u>14</u></a> 7 pg, 294.75 KB	<p>Filed clerk order (Deputy Clerk: IHP): On September 25, 2018, this court issued an order staying appellate proceedings pending disposition of the September 10, 2018 motion in the district court. On October 17, 2018, the district court denied the motion. The stay order filed on September 25, 2018, is lifted and this appeal shall proceed. A review of the district court's docket reflects that the district court has certified that this appeal is not taken in good faith and has denied appellant leave to proceed on appeal in forma pauperis. See 28 U.S.C. Â§ 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. See 28 U.S.C. Â§ 1915(e)(2). Within 35 days after the date of this order, appellant must: (1) file a motion to dismiss this appeal, see Fed. R. App. P. 42(b), OR (2) file a statement explaining why the appeal is not frivolous and should go forward. If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. See 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice. If appellant files a statement that the appeal should go forward, appellee may file a response within 10 days after service of appellant's statement. The briefing schedule for this appeal is stayed. The pending motion for injunctive relief will be addressed by separate order. The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward. Appellant may use the enclosed forms for any motion to dismiss the appeal or statement that the appeal should go forward. [11059133] (AF) [Entered: 10/24/2018 03:55 PM]</p>
10/24/2018	<a href="#"><u>15</u></a> 22 pg, 1.29 MB	<p>Filed (ECF) Appellant Darryl Carter response to Court order dated 10/24/2018. Date of service: 10/24/2018. [11059390] [18-16788] (Carter, Darryl) [Entered: 10/24/2018 10:46 PM]</p>
10/27/2018	<a href="#"><u>16</u></a> 14 pg, 908.72 KB	<p>Filed (ECF) Appellant Darryl Carter Correspondence: Notice of intent of adverse party to prevent appellant's ability to prosecute the herein case; persistent ongoing irreparable harm.. Date of service: 10/24/2018 [11063191] [18-16788] (Carter, Darryl) [Entered: 10/27/2018 07:30 PM]</p>
11/08/2018	<a href="#"><u>17</u></a> 144 pg, 3.25 MB	<p>Filed (ECF) Appellant Darryl Carter EMERGENCY Motion for injunction pending appeal. Date of service: 11/08/2018. [11081114] [18-16788] (Carter, Darryl) [Entered: 11/08/2018 01:01 AM]</p>

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11/08/2018	<a href="#">18</a> 2 pg, 77.85 KB	Filed (ECF) Appellant Darryl Carter Correspondence: correspondence to clerk regarding emergency motion to route to the panel for adjudication.. Date of service: 11/08/2018 [11081115] [18-16788] (Carter, Darryl) [Entered: 11/08/2018 01:12 AM]
11/13/2018	<a href="#">19</a> 145 pg, 3.14 MB	Filed (ECF) Appellant Darryl Carter EMERGENCY Motion for injunction pending appeal. Date of service: 11/13/2018. [11085182] [18-16788] (Carter, Darryl) [Entered: 11/13/2018 11:24 AM]
11/13/2018	<a href="#">20</a> 2 pg, 78.08 KB	Filed (ECF) Appellant Darryl Carter Correspondence: notice of increased and worsened irreparable harm necessitating emergency relief. Date of service: 11/13/2018 [11085187] [18-16788] (Carter, Darryl) [Entered: 11/13/2018 11:27 AM]
03/07/2019	<a href="#">21</a> 2 pg, 144.64 KB	Filed order (WILLIAM C. CANBY, SUSAN P. GRABER and M. MARGARET MCKEOWN) The district court certified that this appeal is not taken in good faith and denied appellant leave to proceed on appeal in forma pauperis. See 28 U.S.C. Â§ 1915(a). On October 24, 2018 the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. See 28 U.S.C. Â§ 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious). Upon a review of the record and response to the court's October 24, 2018 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. <a href="#">5</a> ) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. Â§ 1915(e)(2). All other pending motions are denied as moot. DISMISSED. [11219381] (JMR) [Entered: 03/07/2019 11:04 AM]

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